

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

SHERRY L. HARVEY,

Plaintiff,

v.

**CIVIL ACTION NO. 3:12-CV-37
(JUDGE GROH)**

**MICHAEL J. ASTRUE,
Commissioner of Social Security,**

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before this Court for consideration of the Report and Recommendation ("R&R") of United States Magistrate Judge John S. Kaull [Doc. 19], filed on February 11, 2013, to which neither party filed objections.¹ Pursuant to 28 U.S.C. §636(b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, failure to file objections to the magistrate judge's proposed findings and recommendation permits the District Court to review the recommendation under the standards that the District Court believes are appropriate, and under these circumstances, the parties' right to *de novo* review is waived. See **Webb v. Califano**, 468 F. Supp. 825 (E.D. Cal. 1979). The R&R specifically stated that objections were to be filed within fourteen days after being served with a copy of the R&R. Accordingly, because no objections have been filed, this R&R will be reviewed for clear error.

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Pursuant to the magistrate judge's R&R, as well as 28 U.S.C. §636(b)(1)(C) and FED. R. Civ. P. 6(d), objections were due fourteen plus three days after entry of the R&R, or by February 28, 2013.

In this matter, the magistrate judge found that substantial evidence did not support the ALJ's credibility finding. Additionally, among other things, the magistrate judge concluded that substantial evidence did not support the ALJ's finding that Plaintiff's limitations of concentration, persistence or pace were all mild and did not support the ALJ's reliance on the testimony of the Vocational Expert in response to the hypothetical.

Upon review of the above, it is the opinion of this Court that the Report and Recommendation [**Doc. 19**] should be, and is, hereby **ORDERED ADOPTED**. For the reasons more fully stated in the Report and Recommendation, this Court **ORDERS** that the Defendant's Motion for Summary Judgment [**Doc. 16**] be **DENIED** and the Plaintiff's Motion for Summary Judgment [**Doc. 14**] be **GRANTED in part**, by reversing the Commissioner's decision under sentence four of 42 U.S.C. §§ 405(g) and 1383(c)(3), with a remand of the cause to the Commissioner for further proceedings consistent and in accord with the R&R. Accordingly, this Court further **ORDERS** that this matter be **DISMISSED WITH PREJUDICE** and that it be **STRICKEN FROM THE DOCKET OF THIS COURT**. The Clerk is **DIRECTED** to enter judgment in favor of the Plaintiff.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record.

DATED: March 26, 2013


GINA M. GROH
UNITED STATES DISTRICT JUDGE